

REMARKS

The Final Office Action mailed July 21, 2003 (Paper No. 8) has been carefully reviewed and the following is made in response thereto. Applicants respectfully request reconsideration of this application and the timely allowance of the pending claims.

Summary of the Examiner Interview

Applicant's undersigned representative met with Examiner Nguyen on Friday, February 27, 2004, at her office in Arlington, VA. Kurt Dahlberg, the inventor of the instant application, joined the interview telephonically.

During the interview, Applicant's representative showed the Examiner the following samples:

Samples 1 to 3: Current supplement products available on the market based on the prior art.

Sample 4: One example of the supplement products described in the instant patent application.

Samples 5 to 7: Examples of mushroom spawn and casing spawn.

Sample 8: A sample of BIODAC, one possible ingredient in the polysaccharide mushroom compost supplements described in the instant patent application.

Sample 9: A sample of calcium alginate beads like those used in the Romaine *et al.* patent cited as prior art. This sample represents the inventor's best attempt to make the equivalent of Romaine's casing spawn, although he did not have the proper equipment to get exactly the right bead size.

Using the samples above for demonstration purposes, Mr. Dahlberg explained that the mushroom compost supplements of the present invention are not the same as mushroom spawn or casing spawn as disclosed and claimed by Romaine *et al.* (U.S. Patent No. 4,803,800). He further explained that the easiest way to make the distinction between spawn and supplement is that spawn is the equivalent of a plant seed while supplement is the equivalent of a plant fertilizer. Furthermore, Mr. Dahlberg explained that mushroom spawn and casing spawn are always

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colonized by the mycelium of the mushroom begin cultivated. In contrast, mushroom compost supplements never contain mushroom mycelia.

Status of the Claims

Claims 1-16 and 18-36 are currently pending.

In an effort to further clarify the claimed invention and advance prosecution, claim 1 has hereby been newly amended to recite that the claimed enriched mushroom compost supplement "does not comprise mushroom mycelia." Claim 1 is the only independent claim currently pending in the instant application. Support for the newly added phrase can be found throughout the as-filed application. See, for example, page 1, lines 19-26, where it teaches that mushroom spawn includes "mushroom mycelia", and page 4, line 2 to page 7, line 9 which teaches that a mushroom supplement does not include mushroom mycelia.

The Rejection under 35 U.S.C. § 102(b)

Claims 1-7 and 36 stand rejected under 35 U.S.C. § 102(b) as being allegedly anticipated by Romaine *et al.* (U.S. Pat. No. 4,803,800). Applicants respectfully traverse the rejection and request reconsideration for the following reasons.

All of the discussion pertinent to this rejection as set forth in the Amendment After Final Under 37 C.F.R. 1.116 filed November 24, 2003, are incorporated herein in their entirety.

As discussed above, claim 1 has hereby been newly amended to recite that the claimed enriched mushroom compost supplement "does not comprise mushroom mycelia."

As discussed in detail in previously-filed responses and during the recent Examiner Interview, the invention disclosed and claimed by Romaine *et al.* (U.S. Patent No. 4,803,800) is directed to mushroom spawn. Romaine *et al.* state that "the term 'spawn' refers to a nutrient substrate colonized by mycelium" (column 2, lines 21-22). One skilled in the art recognizes that the word "spawn" is synonymous with "fungal mycelium". See, for example the attached definition of "spawn" from The Concise Oxford Dictionary of Botany, page 383 (M. Allaby, editor, Oxford University Press, 1992). Romaine *et al.* further state that the "substrate capsule of the present invention may thus be regarded as a synthetic analog of the prior known grain substrate for spawn or compost substrate for CACing material" (column 12, lines 27-30).

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Romaine *et al.* teach that "CACing" refers to "compost-at-casing" which is "compost colonized by mushroom fungus and then applied to the colonized compost" (column 2, lines 38-45).

We further note that each and every one of the independent claims of the Romaine *et al.* patent (*i.e.*, claims 1, 23, 70 and 92) require inoculation with "filamentous fungi" (*i.e.*, mycelia). Thus, Romaine *et al.* clearly distinguish their spawn invention from the instant claimed mushroom supplement that is not colonized by mushroom mycelium.

Nothing in the specification or claims in the instant application refers to causing the Polysaccharide Mushroom Compost Supplement to become colonized by mushroom mycelium. A person of ordinary skill in the art of growing mushrooms would not equate a nutrient substrate colonized by mycelium (*to wit*, a mushroom spawn) with a mixture of dry ingredients (*to wit*, a mushroom compost supplement). Claim 1 of the present invention has hereby been amended to clearly differentiate the claimed supplement of the instant claimed invention from the spawn compositions disclosed and claimed by Romaine *et al.*

For the above reasons and in view of the amendment to claim 1, applicant respectfully requests that the Examiner withdraw the rejection.

The Rejection of Claims under 35 U.S.C. § 103(a)

Claims 8-35 stand rejected under 35 U.S.C. § 103(a) as being allegedly unpatentable over Romaine *et al.* (U.S. Pat. No. 4,803,800). Applicants respectfully traverse the rejection and request reconsideration for the following reasons:

Applicants' comments above with respect to the Romaine *et al.* patent are incorporated herein by reference. Respectfully, the improved mushroom spawn methods and compositions disclosed by Romaine *et al.* do not teach or suggest the instant invention. There would have been absolutely no motivation to modify the teachings in Romaine *et al.* to arrive at the claimed invention because a person skilled in the art of mushroom cultivation would not add mushroom mycelia to the mushroom supplement of the instant claimed invention. For the reasons stated above, withdrawal of the rejection is requested.

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Conclusion


In view of the foregoing remarks, Applicants respectfully request withdrawal of all outstanding rejections and early notice of allowance to that effect. Should the Examiner believe that a telephonic interview would expedite prosecution and allowance of this application, she is encouraged to contact the undersigned at her convenience.

Except for issue fees payable under 37 C.F.R. § 1.18, the Commissioner is hereby authorized by this paper to charge any additional fees during the entire pendency of this application including fees due under 37 C.F.R. §§ 1.16 and 1.17 which may be required, including any required extension of time fees, or credit any overpayment to Deposit Account No.50-0310. This paragraph is intended to be a **CONSTRUCTIVE PETITION FOR EXTENSION OF TIME** in accordance with 37 C.F.R. § 1.136(a)(3).

Respectfully submitted,

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